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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT WILLIAM CREIGHTON,

Defendant and Appellant.

A137718

**(Marin County
Super. Ct. No. SC176682A)**

Robert William Creighton appeals from a judgment of conviction and sentence imposed after he entered a guilty plea to multiple counts. He contends the court erred by staying sentence enhancements based on his prior prison confinement (Pen. Code, § 667.5), rather than striking the enhancements, to effect his negotiated disposition. We will strike the prior prison term enhancements and affirm the judgment in all other respects.

I. FACTS AND PROCEDURAL HISTORY

Creighton was charged with driving under the influence of alcohol with a prior violation punished as a felony (Veh. Code, §§ 23152, subd. (a), 23550.5, subd. (a)) and driving while having a blood alcohol level of .08 percent or above with a prior violation punished as a felony (Veh. Code, §§ 23152, subd. (b), 23550.5, subd. (a)). For sentencing purposes, it was alleged that Creighton had a prior strike conviction for arson (Pen. Code, § 451, subd. (d)). (See Pen. Code, §§ 667, subd. (b)-(i), 1170.12.) It was

further alleged that he had five prior convictions for which he served a prison term (prison priors) within the meaning of Penal Code section 667.5, subdivision (b).

Creighton entered into a written plea agreement by which he agreed to plead guilty to both counts and admit the strike prior and the five prison priors, based on the court's indication that he would be sentenced to six years in prison. Pursuant to this agreement and negotiated disposition, he entered his plea and admitted the prior strike conviction and prison priors on the record in court.

In accord with the negotiated disposition, the court sentenced Creighton to six years in prison, based on the high term of three years on count one, doubled due to the strike prior. An identical sentence on count two was stayed pursuant to Penal Code section 654. In addition – and the basis of this appeal – the court purported to “stay[]” the enhancements for the five prison priors.

II. DISCUSSION

The trial court has authority to strike enhancements alleged under Penal Code section 667.5. (See Pen. Code, § 1385; *People v. Meloney* (2003) 30 Cal.4th 1145, 1155-1156 [on-bail enhancement]; *People v. Garcia* (2008) 167 Cal.App.4th 1550, 1561 (*Garcia*) [prior prison term enhancement].) Indeed, the trial court *must* exercise its discretion to either impose or strike a prior prison term enhancement. (*Garcia, supra*, 167 Cal.App.4th at p. 1561.) The failure to do so results in a legally unauthorized sentence. (*People v. Bradley* (1998) 64 Cal.App.4th 386, 390-392.)

The parties to this appeal agree that it is unnecessary to remand the matter to the trial court to decide whether to impose or strike the enhancements, because the court and the parties had already agreed the enhancements would not be imposed in light of the negotiated disposition set forth in Creighton's plea agreement. The parties further agree that this court may strike the prior prison term enhancements.

Accordingly, we will strike the prior prison term enhancements. There being no other issue raised in this appeal, we will affirm the judgment in all other respects.¹

III. DISPOSITION

The prior prison term enhancements (Pen. Code, § 667.5) are stricken. The clerk of the superior court shall prepare an amended abstract of judgment that reflects the striking of the prior prison term enhancements on each count. In all other respects, the judgment is affirmed.

Needham, J.

We concur:

Jones, P.J.

Bruiniers, J.

¹ In a petition for writ of habeas corpus, case number A139242, Creighton has challenged the competency of his trial counsel. We have denied that petition by separate order filed this date.